IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7162 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

B M BHAT

Versus

DISTRICT JUDGE,

Appearance:

1. Special Civil Application No. 7162 of 1992

MR JS YADAV for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1

MR PARESH UPADHYAY for Respondent No. 2

LAW OFFICER BRANCH for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 01/10/2002

ORAL JUDGEMENT

1. The petitioner has challenged the order of his

removal from service passed by the High Court on the Administrative side while allowing his appeal against the order of dismissal, which was made by the District Judge.

2. In the Departmental Inquiry No. 3 of 1990, the petitioner, who was working as a watchman in the Court of the Civil Judge (S.D.) - Himmatnagar, was, by the charge dated 8-2-1990 issued by the District Judge, Himmatnagar with an allegation of misconduct to the effect that, on 25th January 1990 at 11.00 hrs. of night, he was found absent from duty as a watchman, and was therefore guilty of dereliction of duty. It was specifically stated in that charge that the petitioner was aware that, for similar misconduct, he was imposed punishment of stoppage of three increments with future effect in the Departmental Inquiry No.1 of 1985 and that, he had undergone the punishment. This charge was accompanied by list of documents and witnesses forwarding copies of the documents including the order made by the District Judge in Departmental Inquiry No. 1 of 1985 against the petitioner. A supplementary charge was also given that, to the effect that, on 11th February 1990 at 11.20 hrs. of night, he was again found absent from duty.

3. After the inquiry in which the petitioner was given adequate hearing, the competent authority dismissed the petitioner by order dated 25th June 1990. The petitioner preferred an appeal before the High Court and by the impugned order, his punishment of dismissal was reduced to removal from service. Pursuant to the order of the High Court passed in appeal, the impugned order dated 24-7-1990 at Annexure "E" to the petition was issued by the learned District Judge, removing the petitioner from service.

4. The learned counsel appearing for the petitioner strongly contended that the details of the previous inquiry and punishment were not furnished to the petitioner and relied upon the decision of the Supreme Court in The State of Mysore v. K.Manche Gowda, reported in AIR 1964 SC 506 in which the Supreme court held that a government servant must have a reasonable opportunity not only to prove that he was not guilty of the charges levelled against him, but also to establish that the punishment proposed to be imposed was either not called for or excessive. On the strength of this decision, it was contended that the fact that the previous punishment was to be the basis for the punishment which was now sought to be imposed, ought to have been disclosed to the petitioner.

5. The record shows that, as a matter of historical background, the earlier misconduct of the petitioner which was established in an independent inquiry (1 of 1985) and in respect of which the petitioner was already punished for a similar misconduct had come on record during the inquiry. There was a clear mention of that order in the charge framed by the District Judge on 8-2-1990 and copy of that order was sent to the petitioner as mentioned in the list of documents dated 8-2-1990. The petitioner had ample opportunity to cross-examine the witness who had produced the earlier order of his punishment.

6. The fact about the earlier punishment of the petitioner was mentioned only as a historical background to show that what type of employee he was. It was not disputed at all by the petitioner during the inquiry that, in the earlier Departmental Enquiry No. 1 of 1985, his three increments were withheld with future effect and that he had undergone the punishment. In the Inquiry Report no. 3 of 1990, it has been clearly recorded in paragraph 4 that it had come in evidence in the statement of Jashwantkumar, exh.17, who was working as a Senior Clerk in the District Court that inquiry No. 1 of 1985 was held against the petitioner, and on 3-5-1986, he was found guilty and imposed a punishment of stoppage of three increments. That order was produced by that witness. The petitioner had an ample opportunity to deal with this fact which was brought on record. However, he never disputed that he was punished in that earlier inquiry for a similar misconduct. There was obviously no question of imposing punishment for that earlier misconduct again during the present inquiry which was only in respect of his lapses during the nights of 25th January 1990 and 11th February 1990.

7. The misconduct established against the petitioner was of a grave nature having regard to the nature of his duties as a watchman. The punishment of removal imposed on the petitioner by the Administrative side of the High Court cannot be said to be harsh or disproportionate. In fact, by reducing the punishment of dismissal to removal, the Administrative side of the High Court had shown leniency towards this incorrigible employee who in fact merited the punishment of dismissal for his misconduct of having remained absent during the nights as a watchman when he was supposed to be on duty vigilantly guarding the premises of the Court. There is, therefore, no warrant for interference with the impugned order. The petition is, therefore, dismissed. Rule is discharged with no order as to costs.

[R.K.ABICHANDANI, J.]

parmar*